

## **Assembly Bill No. 2344**

### **CHAPTER 636**

An act to amend Sections 7962, 9001, 9002, 9006, and 9007 of, and to add Sections 7613.5 and 9000.5 to, the Family Code, relating to family law.

[Approved by Governor September 26, 2014. Filed with  
Secretary of State September 26, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2344, Ammiano. Family law: parentage.

(1) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship. Under existing law the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in assisted reproduction of a woman other than the donor's spouse is treated at law as if he were not the natural parent of the child thereby conceived unless otherwise agreed in a writing signed by the donor and the woman prior to the conception of the child.

This bill would establish statutory forms for assisted reproduction to provide clarity regarding a person's intent to be a legal parent if he or she is using assisted reproduction at the time of conception. The bill would state that the forms satisfy the writing requirement described above, but would state that use of the forms would not be required to satisfy that writing requirement.

(2) Existing law establishes the process by which a person may be adopted by a stepparent who is married to or is the domestic partner of the person's parent. Existing law requires that each case of stepparent adoption be investigated by certain individuals or entities, including a probation officer, private licensed adoption agency, or county welfare department in the county in which the adoption proceeding is pending. Under existing law, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including costs incurred for the investigation. Existing law also requires the prospective adoptive parents to be examined by the court, as specified.

This bill would establish a procedure for conducting a stepparent adoption involving a spouse or partner who gave birth to the child during the marriage or domestic partnership, and would exempt these adoptions from the requirements that a home visit or home study be performed, that the prospective adoptive parent appear before the court, and that the prospective adoptive parent be liable for all reasonable costs incurred in connection with the stepparent adoption, unless otherwise ordered by the court for good cause. The bill would make related and conforming changes.

(3) Existing law requires an assisted reproduction agreement for gestational carriers to include the date on which the assisted reproduction agreement was executed, the persons from which the gametes originated, unless anonymously donated, and the identity of the intended parent or parents.

This bill would require a disclosure of the manner in which the intended parents will cover the medical expenses of the gestational carrier and of the newborn, as provided.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7613.5 is added to the Family Code, to read:

7613.5. (a) An intended parent may, but is not required to, use the forms set forth in this section to demonstrate his or her intent to be a legal parent of a child conceived through assisted reproduction. These forms shall satisfy the writing requirement specified in Section 7613, and are designed to provide clarity regarding the intentions, at the time of conception, of intended parents using assisted reproduction. These forms do not affect any presumptions of parentage based on Section 7611, and do not preclude a court from considering any other claims to parentage under California statute or case law.

(b) These forms apply only in very limited circumstances. Please read the forms carefully to see if you qualify for use of the forms.

(c) These forms do not apply to assisted reproduction agreements for gestational carriers or surrogacy agreements.

(d) Nothing in this section shall be interpreted to require the use of one of these forms to satisfy the writing requirement of Section 7613.

(e) The following are the optional California Statutory Forms for Assisted Reproduction:

**California Statutory Forms for Assisted Reproduction, Form 1:**

Married Spouses or Registered Domestic Partners Using Assisted Reproduction to Conceive a Child

Use this form if: (1) You and the other person are married spouses or registered domestic partners (including registered domestic partners or civil union partners from another jurisdiction); (2) you and the other person are conceiving a child through assisted reproduction using sperm and/or egg donation; and (3) one of you will be giving birth.

**WARNING: Signing this form does not terminate the parentage claim of a sperm donor.** A sperm donor's claim to parentage is terminated if the sperm is provided to a licensed physician or surgeon or to a licensed sperm bank prior to insemination as required by Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.** Even if you do not fill out this form, a spouse or domestic partner of the parent giving birth is presumed to be a legal parent of any child born during the marriage or domestic partnership.

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This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm and/or egg donation.

I, \_\_\_\_\_ (print name of spouse/partner), am married to, or in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction) with, a person who will give birth to a child we plan to conceive through assisted reproduction using sperm and/or egg donation. I consent to the use of assisted reproduction by my spouse/domestic partner to conceive a child. I INTEND to be a parent of the child conceived.

#### SIGNATURES

Intended parent who will give birth: \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

Intended parent spouse or registered domestic partner: \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

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#### NOTARY ACKNOWLEDGMENT

State of California  
 County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
 (insert name and title of the officer)  
 personally appeared \_\_\_\_\_,  
 who proved to me on the basis of satisfactory evidence to be the person(s)  
 whose name(s) is/are subscribed to the within instrument and acknowledged  
 to me that he/she/they executed the same in his/her/their authorized capacity,  
 and that by his/her/their signature(s) on the instrument the person(s), or the  
 entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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**California Statutory Forms for Assisted Reproduction, Form 2:**

Unmarried, Intended Parents Using Intended Parent's Sperm to Conceive a Child

Use this form if: (1) Neither you or the other person are married or in a registered domestic partnership (including a registered domestic partnership or civil union from another state); (2) one of you will give birth to a child conceived through assisted reproduction using the intended parent's sperm; and (3) you both intend to be parents of that child.

Do not use this form if you are conceiving using a surrogate.

WARNING: If you do not sign this form, you may be treated as a sperm donor if your sperm is provided to a licensed physician or surgeon or to a licensed sperm bank prior to insemination according to Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.**

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This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm donation.

I, \_\_\_\_\_ (print name of parent giving birth), plan to use assisted reproduction with another intended parent who is providing sperm to conceive the child. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND for the person providing sperm to be a parent of the child to be conceived.

I, \_\_\_\_\_ (print name of parent providing sperm), plan to use assisted reproduction to conceive a child using my sperm with the parent giving birth. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: \_\_\_\_\_ (print name)  
\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

Intended parent providing sperm: \_\_\_\_\_ (print name)  
\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

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NOTARY ACKNOWLEDGMENT

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity,  
and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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**California Statutory Forms for Assisted Reproduction, Form 3:**

Intended Parents Conceiving a Child Using Eggs from One Parent and the  
Other Parent Will Give Birth

Use this form if: You are conceiving a child using the eggs from one of you  
and the other person will give birth to the child; (2) and you both intend to be  
parents to that child.

Do not use this form if you are conceiving using a surrogate.

**WARNING: Signing this form does not terminate the parentage claim of  
a spermdonor.** A sperm donor's claim to parentage is terminated if the sperm  
is provided to a licensed physician or surgeon or to a licensed sperm bank prior  
to insemination as required by Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.**

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This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using eggs from one parent and the other parent will give birth to the child.

I, \_\_\_\_\_ (print name of parent giving birth), plan to use assisted reproduction to conceive and give birth to a child with another person who will provide eggs to conceive the child. I INTEND for the person providing eggs to be a parent of the child to be conceived.

I, \_\_\_\_\_ (print name of parent providing eggs), plan to use assisted reproduction to conceive a child with another person who will give birth to the child conceived using my eggs. I INTEND to be a parent of the child to be conceived.

#### SIGNATURES

Intended parent giving birth: \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

Intended parent providing eggs: \_\_\_\_\_ (print name)  
 \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

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#### NOTARY ACKNOWLEDGMENT

State of California  
 County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
 (insert name and title of the officer)

personally appeared \_\_\_\_\_,  
 who proved to me on the basis of satisfactory evidence to be the person(s)  
 whose name(s) is/are subscribed to the within instrument and acknowledged  
 to me that he/she/they executed the same in his/her/their authorized capacity,  
 and that by his/her/their signature(s) on the instrument the person(s), or the  
 entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of  
 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

SEC. 2. Section 7962 of the Family Code is amended to read:

7962. (a) An assisted reproduction agreement for gestational carriers shall contain, but shall not be limited to, all of the following information:

(1) The date on which the assisted reproduction agreement for gestational carriers was executed.

(2) The persons from which the gametes originated, unless anonymously donated.

(3) The identity of the intended parent or parents.

(4) Disclosure of how the intended parents will cover the medical expenses of the gestational carrier and of the newborn or newborns. If health care coverage is used to cover those medical expenses, the disclosure shall include a review of the health care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the gestational carrier, third-party liability liens or other insurance coverage, and any notice requirements that could affect coverage or liability of the gestational carrier. The review and disclosure do not constitute legal advice. If coverage of liability is uncertain, a statement of that fact shall be sufficient to meet the requirements of this section.

(b) Prior to executing the written assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or intended parents shall be represented by separate independent licensed attorneys of their choosing.

(c) The assisted reproduction agreement for gestational carriers shall be executed by the parties and the signatures on the assisted reproduction agreement for gestational carriers shall be notarized or witnessed by an equivalent method of affirmation as required in the jurisdiction where the assisted reproduction agreement for gestational carriers is executed.

(d) The parties to an assisted reproduction agreement for gestational carriers shall not undergo an embryo transfer procedure, or commence injectable medication in preparation for an embryo transfer for assisted reproduction purposes, until the assisted reproduction agreement for gestational carriers has been fully executed as required by subdivisions (b) and (c) of this section.

(e) An action to establish the parent-child relationship between the intended parent or parents and the child as to a child conceived pursuant to an assisted reproduction agreement for gestational carriers may be filed before the child's birth and may be filed in the county where the child is anticipated to be born, the county where the intended parent or intended parents reside, the county where the surrogate resides, the county where the assisted reproduction agreement for gestational carriers is executed, or the county where medical procedures pursuant to the agreement are to be performed. A copy of the assisted reproduction agreement for gestational

carriers shall be lodged in the court action filed for the purpose of establishing the parent-child relationship. The parties to the assisted reproduction agreement for gestational carriers shall attest, under penalty of perjury, and to the best of their knowledge and belief, as to the parties' compliance with this section in entering into the assisted reproduction agreement for gestational carriers. Submitting those declarations shall not constitute a waiver, under Section 912 of the Evidence Code, of the lawyer-client privilege described in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) (1) A notarized assisted reproduction agreement for gestational carriers signed by all the parties, with the attached declarations of independent attorneys, and lodged with the superior court in accordance with this section, shall rebut any presumptions contained within Part 2 (commencing with Section 7540), subdivision (b) of Section 7610, and Sections 7611 and 7613, as to the gestational carrier surrogate, her spouse, or partner being a parent of the child or children.

(2) Upon petition of any party to a properly executed assisted reproduction agreement for gestational carriers, the court shall issue a judgment or order establishing a parent-child relationship, whether pursuant to Section 7630 or otherwise. The judgment or order may be issued before or after the child's or children's birth subject to the limitations of Section 7633. Subject to proof of compliance with this section, the judgment or order shall establish the parent-child relationship of the intended parent or intended parents identified in the surrogacy agreement and shall establish that the surrogate, her spouse, or partner is not a parent of, and has no parental rights or duties with respect to, the child or children. The judgment or order shall terminate any parental rights of the surrogate and her spouse or partner without further hearing or evidence, unless the court or a party to the assisted reproduction agreement for gestational carriers has a good faith, reasonable belief that the assisted reproduction agreement for gestational carriers or attorney declarations were not executed in accordance with this section. Upon motion by a party to the assisted reproduction agreement for gestational carriers, the matter shall be scheduled for hearing before a judgment or order is issued. Nothing in this section shall be construed to prevent a court from finding and declaring that the intended parent is or intended parents are the parent or parents of the child where compliance with this section has not been met; however, the court shall require sufficient proof entitling the parties to the relief sought.

(g) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the clerk of the court pursuant to this part shall not be open to inspection by any person other than the parties to the proceeding and their attorneys and the State Department of Social Services, except upon the written authority of a judge of the superior court. A judge of the superior court shall not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition, or any portion of



those documents, except in exceptional circumstances and where necessary. The petitioner may be required to pay the expense of preparing the copies of the documents to be inspected.

(h) Upon the written request of any party to the proceeding and the order of any judge of the superior court, the clerk of the court shall not provide any documents referred to in subdivision (g) for inspection or copying to any other person, unless the name of the gestational carrier or any information tending to identify the gestational carrier is deleted from the documents or copies thereof.

(i) An assisted reproduction agreement for gestational carriers executed in accordance with this section is presumptively valid and shall not be rescinded or revoked without a court order. For purposes of this part, any failure to comply with the requirements of this section shall rebut the presumption of the validity of the assisted reproduction agreement for gestational carriers.

SEC. 3. Section 9000.5 is added to the Family Code, to read:

9000.5. (a) Stepparent adoptions where one of the spouses or partners gave birth to the child during the marriage or domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, shall follow the procedure provided by this section. Unless otherwise provided in this section, the procedures for stepparent adoptions apply.

(b) The following are not required in stepparent adoptions under this section unless otherwise ordered by the court for good cause:

- (1) A home investigation pursuant to Section 9001 or a home study.
- (2) Costs incurred pursuant to Section 9002.
- (3) A hearing pursuant to Section 9007.

(c) For stepparent adoptions filed under this section, the following shall be filed with the petition for adoption:

- (1) A copy of the parties' marriage certificate, registered domestic partner certificate, or civil union from another jurisdiction.
- (2) A copy of the child's birth certificate.
- (3) Declarations by the parent who gave birth and the spouse or partner who is adopting explaining the circumstances of the child's conception in detail sufficient to identify whether there may be other persons with a claim to parentage of the child who is required to be provided notice of, or who must consent to, the adoption.

(d) The court may order a hearing to ascertain whether there are additional persons who must be provided notice of, or who must consent to, the adoption if it appears from the face of the pleadings and the evidence that proper notice or consent have not been provided.

(e) The court shall grant the stepparent adoption under this section upon finding both of the following:

- (1) That the parent who gave birth and the spouse or partner who is adopting were married or in a domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, at the time of the child's birth.

(2) Any other person with a claim to parentage of the child who is required to be provided notice of, or who must consent to, the adoption has been noticed or provided consent to the adoption.

SEC. 4. Section 9001 of the Family Code is amended to read:

9001. (a) Except as provided in Section 9000.5, the probation officer, qualified court investigator, licensed clinical social worker, licensed marriage family therapist, private licensed adoption agency, or, at the option of the board of supervisors, the county welfare department in the county in which the adoption proceeding is pending shall make an investigation of each case of stepparent adoption. The court may not make an order of adoption until after the probation officer, qualified court investigator, licensed clinical social worker, licensed marriage family therapist, private licensed adoption agency, or county welfare department has filed its report and recommendation and they have been considered by the court.

(b) If a private licensed adoption agency conducts the investigation, it shall assign the investigation to a licensed clinical social worker or licensed marriage and family therapist associated with the agency. Any grievance regarding the investigation shall be directed to the licensing authority of the clinical social worker or marriage and family therapist, as applicable.

(c) Unless ordered by the court, no home study may be required of the petitioner's home in a stepparent adoption. The agency conducting the investigation or any interested person may request the court to order a home study or the court may order a home study on its own motion.

(d) "Home study" as used in this section means a physical investigation of the premises where the child is residing.

(e) Nothing in this section shall be construed to require the State Department of Social Services to issue regulations for stepparent adoptions.

SEC. 5. Section 9002 of the Family Code is amended to read:

9002. Except as provided in Section 9000.5, in a stepparent adoption, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of seven hundred dollars (\$700). The court, probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

SEC. 6. Section 9006 of the Family Code is amended to read:

9006. (a) If the petitioner moves to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the probation officer, qualified court investigator, or county welfare department of the action, unless a home investigation was not required pursuant to Section 9000.5.

(b) If a birth parent has refused to give the required consent, the adoption petition shall be dismissed.

SEC. 7. Section 9007 of the Family Code is amended to read:

9007. Except as provided in Section 9000.5, the prospective adoptive parent and the child proposed to be adopted shall appear before the court pursuant to Sections 8612, 8613, and 8613.5.

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